

**IN RE: Implementation of the Federal
Communications Commission's Triennial
Review Order (Phase I - Local Switching
for Enterprise Customers).**

DOCKET 29054

ORDER

BY THE COMMISSION:

On August 21, 2003, the Federal Communications Commission (the "FCC") released its long awaited *Triennial Review Order*.¹ Said Order was published in the *Federal Register* on September 2, 2003 and thus will become effective by operation of law on October 2, 2003 unless otherwise stayed.

The FCC's *Triennial Review Order* encompasses a number of issues which this Commission and other state regulatory bodies must address. The issue which must first be addressed by the Commission relates to whether local circuit switching for enterprise customers should continue to be provided on an unbundled basis. More specifically, the FCC has established a national presumption that competitors of Incumbent Local Exchange Carriers ("ILECs") will not be impaired without access to

¹ *Review of the §251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order on Remand, CC Docket No. 01-00338, Rel. August 21, 2003 (the "*Triennial Review Order*" or, "*Order*").

unbundled local circuit switching for enterprise customers.² The FCC established, however, that the aforementioned national presumption can be overcome through a “geographic specific analysis” demonstrating that competitive carriers are indeed impaired without access to ILEC local circuit switching.³

With respect to overcoming the national presumption discussed above, the FCC concluded that state commissions are uniquely positioned to evaluate local market conditions and to determine whether enterprise customers should be granted access to unbundled ILEC circuit switching.⁴ In particular, the FCC noted that it would permit state commissions to rebut the national presumption of no impairment without ILEC local circuit switching by undertaking a more granular analysis utilizing the economic and operational criteria established by the FCC in the *Triennial Review Order*. In order to support a petition for a waiver of the national finding of no impairment, the FCC concluded that state commissions must make an affirmative finding of impairment showing that carriers providing service at the DS-1 capacity and above should be entitled to unbundled access to local circuit switching in a particular market.⁵ The FCC established that state commissions have ninety (90) days from the effective date of its *Triennial Review Order* to petition the FCC to waive the finding of no impairment.

Given the October 2, 2003 effective date of the *Triennial Review Order* and the expedited schedule which must be adhered to for overcoming the national presumption of no impairment with respect to local circuit switching, the Commission herein

² *Id.* at ¶451.

³ *Id.* at ¶454.

⁴ *Id.* at ¶455.

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establishes this Docket for purposes of fulfilling the Commission's responsibilities under the *FCC's Triennial Review Order*. We note that the Commission will fulfill all of its responsibilities with respect to the *Triennial Review Order* under this Docket. The inquiries regarding the national presumption with respect to ILEC local circuit switching for enterprise customers will merely be Phase I of this Docket.⁶

The Commission has determined through preliminary staff investigation that the number of unbundled network element ("UNE") combinations consisting of a DS-1 loop with unbundled local circuit switching in Alabama is *de minimis*. Accordingly, we have adopted the staff recommendation that specific proceedings in Phase I should not be undertaken absent a specific request from an affected party seeking to rebut the national presumption established by the FCC with regard to local circuit switching.

Based on the foregoing, we find that any party seeking to have the Commission undertake proceedings aimed at rebutting the FCC's no impairment finding regarding local circuit switching for enterprise customers should submit a petition requesting such action by the Commission no later than October 7, 2003.⁷ Any party petitioning for such action by the Commission should identify the particular geographic area(s) for which it is requesting that the Commission rebut the national finding and should also be prepared to actively participate in any proceedings initiated, including the presentation of "actual

⁵ *Id.*

⁶ Phase II of this Docket will likely address issues related to the continued availability of unbundled local switching for mass market customers. Phase III will likely involve issues related to the continued availability of high capacity transport on certain routes and unbundled high capacity loops at certain locations.

⁷ As indicated in the *Triennial Review Order*, this does not preclude a party from filing such a petition at a later time. Such petition, however, will not be considered as part of this "90-day" proceeding. Instead, such petition will be considered within the six-month deadline required by the *Order*. (See footnote 1398 of the *Triennial Review Order*).

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marketplace evidence” and expert testimony.⁸ Parties opposing any such petition(s) should submit their responses thereto no later than October 17, 2003.

We note that further Orders in this cause regarding the additional responsibilities of the Commission with respect to the *Triennial Review Order* will be forthcoming. The Commission encourages the telecommunications industry participants to continue their efforts at jointly establishing a procedural schedule for the southeastern region.

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That this Docket is hereby established for purposes of fulfilling the Commission’s responsibilities under the Federal Communications Commission’s *Triennial Review Order*.

IT IS FURTHER ORDERED BY THE COMMISSION, That Phase I of this Docket is established for purposes of considering issues related to the Federal Communications Commission’s finding that competitors of Incumbent Local Exchange Carriers are not impaired without access to unbundled local circuit switching for enterprise customers.

IT IS FURTHER ORDERED BY THE COMMISSION, That any party desiring for the Commission to undertake proceedings aimed at rebutting the FCC’s no impairment finding with regard to local circuit switching for enterprise customers should submit a petition requesting such action by the Commission no later than October 7, 2003.

IT IS FURTHER ORDERED BY THE COMMISSION, That any parties opposing petitions for the establishment of proceedings aimed at overcoming the FCC finding of

⁸ *Triennial Review Order* at ¶93.

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no impairment with respect to local circuit switching should submit their responses to such petitions on or before October 17, 2003.

IT IS FURTHER ORDERED BY THE COMMISSION, That jurisdiction in this cause is hereby retained for the issuance of any further order or orders as may appear to be just and reasonable in the premises.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama this 18th day of September, 2003.

ALABAMA PUBLIC SERVICE COMMISSION

Jim Sullivan, President

Jan Cook, Commissioner

George C. Wallace, Jr., Commissioner

ATTEST: A True Copy

Walter L. Thomas, Jr., Secretary